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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

CROATAN BOOKS, INC.,
Petitioner,

-vs-

COMMONWEALTH OF VIRGINIA
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

The Commonwealth of Virginia, the Respondent, prays that the Petition for Writ of Certiorari be denied.

ARGUMENT

1. The trial Court's refusal to allow either counsel for the petitioner or respondent to argue the First Amendment of the Constitution of the United States to the jury was not in error.

The Commonwealth submits that the interpretation of Constitutional standards is not a function of the jury; in this case then, the trial Court's proscribing argument to jury concerning the First Amendment protections of motion picture films was correct.

2. The trial Court's refusal to define in geographic terms the word "Community" as set out in the Commonwealth's instruction No. 4 was not in error.

Petitioner contends that the trial

Court had a legal duty to define geographically the term "Community" as set out in Commonwealth's instruction No. 4. The Commonwealth disagrees.

The Commonwealth submits that in State obscenity prosecutions, juries can properly be instructed to apply "Community Standards" as to the question of obscenity without specifying what Community. Jenkins vs. Georgia, 418 U.S. 153, 41 L Ed 2d 42, 94 S Ct. 2750 (1974).

3. The absence of the word "knowingly" on the arrest warrants does not in this case constitute grounds for reversal error.

The Commonwealth concedes that the warrants issued against petitioner in the instant cases did not charge "knowingly"

possess with intent to rent as defined in Virginia Code §18.2-374(4).

The Commonwealth's position on this issue is three-fold. Firstly, the exact Code Section was included on each and every warrant in the instant case so that petitioner had knowledge of exactly what it was being charged with. Secondly, sufficient evidence was adduced at trial by the Commonwealth to give the jury a basis for finding the petitioner was in "knowing" possession of the obscene materials. (Tr., 10-17-77, at pages 21 through 26, 30 through 32, and Commonwealth's Exhibits 2 through 10). Thirdly, Commonwealth's instruction No. 6, instructs the jury that,

> "If you believe from the evidence beyond a reasonable doubt, that

> Croatan Books, Inc. knowingly (emphasis added) possessed an obscene film with intent to rent same . . . . ".

In addition, the verdict forms used in the instant cases included the word "knowingly" so that when the jury returned its verdicts, petitioner was properly convicted. (Tr., 10-19-77, at pages 369-371).

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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